



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 13, 1993

Mr. Jeff Hankins
Legal Assistant
Texas Department of Insurance
Regulated Lines Section
Legal Services, 110-1A
P.O. Box 149104
Austin, Texas 78714-9104

OR93-511

Dear Mr. Hankins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18826.

The Texas Department of Insurance (the "department") has received a request for information relating to Eagle Insurance Company. Specifically, the requestor seeks information relating to the department's supervision of Eagle Insurance Company. You advise us that most of the requested information will be made available to the requestor. You have submitted representative samples of the remaining information, claiming that sections 3(a)(11) and 3(a)(12) of the Open Records Act except them from required public disclosure.¹

You claim that some of the information submitted to us for review (Tab "A") constitutes "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency" under section 3(a)(11) of the act and, therefore, is excepted from public disclosure. In Open Records Decision No. 615 (1993) (copy enclosed), this office reexamined the section 3(a)(11) exception and held that section 3(a)(11) excepts only those internal communications consisting of advice,

¹While you also claim that the work product doctrine and the attorney-client privilege except some of the requested information from required public disclosure, you have not indicated which portions of the documents submitted to us for review fall within the protection these privileges. We remind you that the custodian of records has the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). If a governmental body fails to show how an asserted exception applies to the records, it will ordinarily waive the exception. See Attorney General Opinion JM-672 (1987).

recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body at issue. *See generally Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ).

The information in Tab "A" consists of several intra-agency and inter-agency communications on the reasons for placing Eagle Insurance Company under supervision, conditions for releasing it from supervision, and independent auditor's report, and other information relating to the financial condition of the company. Tab "A" also includes a "Confidential Financial Analysis of Eagle Insurance Company," which you have indicated is excepted by sections 3(a)(11) and 3(a)(12). The information in Tab "A" is almost entirely factual, and we find no material in it that may be excepted from disclosure by section 3(a)(11). We conclude that the documents under Tab "A", aside from the "CONFIDENTIAL FINANCIAL ANALYSIS," which must be further considered under section 3(a)(12), are not excepted from required public disclosure pursuant to the Open Records Act and must be released in their entirety.

You claim that the documents found under Tab B, consisting of the plan of rehabilitation submitted by Eagle, amendments to the plan, and related documents, as well as the "Confidential Financial Analysis" under Tab A, are excepted from required public disclosure by section 3(a)(12) of the Open Records Act. This exception applies to

information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act. [Footnote deleted.]

V.T.C.S. art. 6252-17a, § 3(a)(12). Insurance companies are "financial institutions" within section 3(a)(12). Open Records Decision No. 158 (1977) at 5-6.

The "Plan of Rehabilitation" was prepared by Eagle Insurance Company for the department's use. It concerns the financial condition and projected operation of the insurance company in supervision. Accordingly, the documents in Tab "B" are within the section 3(a)(12) exception and may be withheld. The "Confidential Financial Analysis" of the insurance company includes an introductory summary of its financial condition and the balance sheets of the company. This report may also be withheld under section 3(a)(12).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan Garrison
Assistant Attorney General
Open Government Section

SG/GCK/jmn

Ref.: ID# 18826

cc: Ms. Sue Nagle
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